

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 7, 1998

IN RE:

**PETITION FOR AN INVESTIGATION AND/OR
SHOW CAUSE ORDER TO DETERMINE JUST
AND REASONABLE RATES CHARGED BY
BELLSOUTH TELECOMMUNICATIONS, INC.**

**DOCKET NO.
98-00021**

**ORDER DENYING MOTION TO DISMISS; HOLDING PETITION FOR AN
EARNINGS INVESTIGATION IN ABEYANCE; and HOLDING PETITION TO
INTERVENE IN ABEYANCE**

This matter comes before the Tennessee Regulatory Authority ("Authority") on the above-styled Petition filed by the American Association of Retired Persons ("AARP") on January 14, 1998, and on the Motion to Dismiss filed by BellSouth Telecommunications, Inc. ("BellSouth") on February 12, 1998, and the Complaint or Petition to Intervene filed on March 31, 1998, by the Consumer Advocate Division, Office of the Attorney General ("CAD"). The Directors of the Authority considered this matter at a regularly scheduled Authority Conference on June 2, 1998.¹

At that Conference, the parties presented oral argument on whether this matter should be permitted to proceed before the agency in light of the Application for Permission to Appeal filed by the Authority and the CAD before the Tennessee Supreme

¹ This matter was originally scheduled for oral argument at the April 7, 1998, Authority Conference. However, it was withdrawn from consideration at that Conference upon the joint request of AARP, BellSouth and the CAD filed on April 3, 1998. After additional filings were submitted by the parties, the Authority heard oral argument and took action on June 2, 1998.

Court in *BellSouth Telecommunications, Inc. v. Tennessee Regulatory Authority*, Appeal No. 01A01-9601-BC-00008. After review of AARP's Petition, BellSouth's Motion and the CAD's Petition and after hearing oral argument from the parties, the Authority determined that it was appropriate not to take action on AARP's Petition but instead to hold the matter in abeyance pending disposition of the Application for Permission to Appeal.² The Authority further determined that it was appropriate at this time to deny BellSouth's Motion to Dismiss without prejudice.³

² In presenting his motion, which passed on a vote of 2 to 1, Director Malone presented the following reasons for holding AARP's Petition in abeyance:

1. That if a public utility is operating outside the bounds of the law or the agency's rules, then it is incumbent upon the Authority to correct such action.
2. That the Authority must consider AARP's Petition in light of the decision of the Court of Appeals for the Middle Section of Tennessee in *BellSouth Telecommunications, Inc. v. Tennessee Regulatory Authority*, Appeal No. 01A01-9601-BC-00008 ("*BellSouth Price Cap Appeal*"), and the Application for Permission to Appeal pending before the Tennessee Supreme Court.
3. That considering the Court of Appeals decision and the pending Application before the Supreme Court it would be premature and against the notion of judicial economy to proceed with an earnings investigation at this time.
4. That given that there are many options available to the Supreme Court in considering the BellSouth Price Cap Appeal, it would be equally premature to dismiss AARP's Petition.
5. In light of the above considerations, the wisest course of action would be to hold AARP's Petition in abeyance until the Supreme Court decides what action it will take on the Application for Permission to Appeal.

(June 2, 1998, Authority Conference Transcript at pp. 76-78.)

³ See June 2, 1998, Authority Conference Transcript at p. 107. As part of her motion to deny BellSouth's Motion to Dismiss, Director Kyle also moved the agency to convene a hearing upon AARP's Petition. Director Kyle's motion did not prevail.

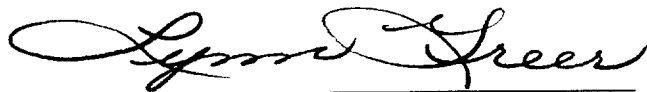
IT IS THEREFORE ORDERED THAT:

1. The Petition For An Investigation and/or Show Cause Order To Determine Just and Reasonable Rates Charged By BellSouth Telecommunications, Inc. filed by the American Association of Retired Persons is held in abeyance pending disposition by the Tennessee Supreme Court of the Application for Permission to Appeal in *Appeal No. 01A01-9601-BC-00008*;

2. The Motion to Dismiss filed by BellSouth Telecommunications, Inc., is denied;

3. The Complaint or Petition to Intervene filed by the Consumer Advocate Division, Office of the Attorney General, is held in abeyance pending disposition by the Tennessee Supreme Court of the Application for Permission to Appeal in *Appeal No. 01A01-9601-BC-00008*; and

4. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.



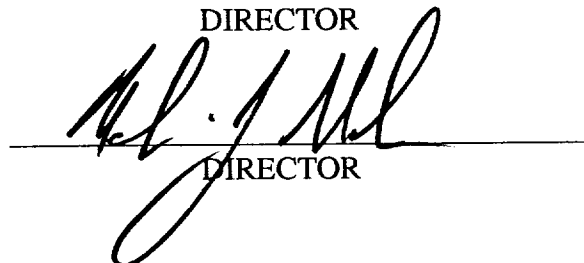
CHAIRMAN

ATTEST:



EXECUTIVE SECRETARY

DIRECTOR



DIRECTOR

*** Consistent with her motion regarding AARP's Petition, Director Kyle voted not to support the majority's action herein.